

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

SERGEY KAZAKOV,

Petitioner,

v.

IMMIGRATION AND CUSTOMS  
ENFORCEMENT FIELD OFFICE  
DIRECTOR,

Respondent.

Case No. 2:24-cv-00774-RSL-TLF

REPORT AND  
RECOMMENDATION

Noted for: September 20, 2024

Petitioner is currently confined at the U.S. Immigration and Customs Enforcement ("ICE") at the Northwest ICE Processing Center ("NWIPC") in Tacoma, Washington. He is unrepresented by counsel and brings this 28 U.S.C. § 2241 habeas action.

Respondent has filed their return and motion to dismiss, to which petitioner did not file a response. Dkt. 7. Having considered the parties' submissions, the balance of the record, and the governing law, the Court recommends that the respondent's motion to dismiss should be GRANTED, petitioner's habeas corpus petition should be DENIED, and the Court should DISMISS the habeas corpus action without prejudice.

BACKGROUND

Petitioner is a native and citizen of Russia. Dkt. 8-2 at 2, Record of Deportable/Inadmissible Alien (October 24, 2023). In 2002 petitioner was admitted to the United States as a Legal Permanent Resident. *Id.* at 4. Between 2016 and 2022

1 petitioner was convicted of multiple offenses in Washington State including Harassment  
2 Threat to Kill in violation of RCW 9A.46.020(2)(b), Attempt to Elude in violation of RCW  
3 46.61.024, and violation of a protection order that involved protection against credible  
4 threats of violence, repeated harassment, or bodily injury to the person or persons for  
5 whom the protection order was issued. Dkt. 8-4 at 2-5, Notice to Appear (October 24,  
6 2023). He was sentenced to 22 months' imprisonment. Dkt. 12-1, Praecipe, Declaration  
7 of Jesse Neuhauser, Deportation Officer (June 27, 2024), at 2.

8       Upon release from his sentence, petitioner was released to ICE custody on  
9 October 24, 2023. Dkt. 8-3 at 2, Warrant for Arrest of Alien (October 22, 2023). On  
10 October 24, 2023 ICE issued a Notice to Appear, charging him as removable pursuant  
11 to sections 237(a)(2)(A)(iii), 237(a)(2)(A)(ii), and 237(a)(2)(E)(ii) of the Immigration and  
12 Nationality Act ("INA"), 8 U.S.C. §§ 1227(a)(2)(A)(iii), 1227(a)(2)(A)(ii), and  
13 1227(a)(2)(e)(ii), because he had been convicted of an aggravated felony as defined in  
14 section 101(a)(43)(F) of the INA, he had been convicted of two crimes involving moral  
15 turpitude not arising out of a single scheme of criminal misconduct, and he had been  
16 enjoined under a protection order and was determined to have engaged in conduct in  
17 violation of that order. Dkt. 8-4.

18       On March 14, 2024 an Immigration Judge ("IJ") ordered petitioner to be removed  
19 from the United States to Russia. Dkt. 8-1 at 2-4, Order of the Immigration Judge  
20 (March 14, 2024). Petitioner waived his right to appeal the IJ's decision, and thus his  
21 removal order became administratively final on March 14, 2024. *Id.* at 4. The  
22 government thereafter had 90-days to effectuate petitioner's removal. 8 U.S.C. §  
23 1231(a)(1)(A).

1 ICE Deportation Officer Jesse Neuhauser filed a declaration attesting that the  
2 Office of Enforcement and Removal Operations (“ERO”) has submitted petitioner’s  
3 travel document request to the Embassy Liaison for Asia and Europe by email and  
4 forwarded the Embassy Liaison’s request for a money order to the Removal  
5 Management Division Headquarters. Dkt. 12-1, Declaration of Jesse Neuhauser, at 2-3.

#### 6 DISCUSSION

7 The petitioner asserts that his detention is governed by 8 U.S.C. § 1226(a). Dkt.  
8 5. The respondent disagrees, asserting that the governing statute is 8 U.S.C. § 1231.  
9 Dkt. 7.

10 8 U.S.C. § 1231(a) governs the detention of non-citizens in immigration  
11 proceedings. “Section 1231(a) governs the detention and release of non-citizens who  
12 have been ordered removed.” *Banda v. McAleenan*, 385 F.Supp.3d 1099, 1112 (W.D.  
13 Wash 2019). During the “removal period,” detention is mandatory. 8 U.S.C. § 1231(a)(2)  
14 (emphases added).

15 The “removal period” generally lasts 90 days, and it begins on the latest of the  
16 following: (1) the date the order of removal becomes final; (2) if the removal order is  
17 judicially reviewed and if a court orders a stay of the removal of the non-citizen, the date  
18 of the court’s final order; or (3) if the non-citizen is detained or confined (except under  
19 an immigration process), the date the non-citizen is released from detention or  
20 confinement. 8 U.S.C. § 1231(a)(1)(B); *Banda*, 385 F.Supp.3d at 1112. After the  
21 removal period expires, DHS has discretionary authority to continue to either detain  
22 certain non-citizens or release them on supervision. 8 U.S.C. § 1231(a)(6); *Prieto-*  
23 *Romero v. Clark*, 534 F.3d 1053, 1059 (9th Cir. 2008); *Banda*, 385 F.Supp.3d at 1112.

1 Although § 1231(a)(6) authorizes ICE to detain petitioner, it cannot do so  
2 indefinitely. In *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001), the Supreme Court held  
3 that § 1231(a)(6) implicitly limits a noncitizen's detention to a period reasonably  
4 necessary to bring about that individual's removal from the United States and does not  
5 permit "indefinite" detention. The Supreme Court also determined that it is  
6 "presumptively reasonable" for DHS to detain a noncitizen for six months following entry  
7 of a final removal order while it works to remove the individual from the United States.  
8 *Id.* "After this 6-month period, once the [noncitizen] provides good reason to believe that  
9 there is no significant likelihood of removal in the reasonably foreseeable future, the  
10 Government must respond with evidence sufficient to rebut that showing." *Id.* If the  
11 Government fails to rebut the noncitizen's showing, the noncitizen is entitled to habeas  
12 relief. *Id.*

13 The six-month presumption "does not mean that every [noncitizen] not removed  
14 must be released after six months. To the contrary, [a noncitizen] may be held in  
15 confinement until it has been determined that there is no significant likelihood of  
16 removal in the reasonably foreseeable future." *Id.* Nevertheless, courts must remember  
17 that "as the period of prior postremoval confinement grows, what counts as the  
18 'reasonably foreseeable future' conversely would have to shrink." *Id.*

19 Here, the 90-day period has expired but the six-month presumptively reasonable  
20 period does not expire until September 14, 2024. Further, there is no evidence in the  
21 record indicating that "there is no significant likelihood of removal." *Zadvydas*, 533 U.S.  
22 at 701. Detention only becomes indefinite if, for example, the country designated in the  
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1 removal order refuses to accept the noncitizen, or if removal is barred by the laws of this  
2 country. See *Diouf v. Mukasey* (“*Diouf I*”), 542 F.3d 1222, 1233 (9th Cir. 2008).

3 Petitioner argues that procurement of his travel document is problematic and  
4 there is no significant likelihood of removal in the reasonably foreseeable future due to  
5 the ongoing conflict between Russia and Ukraine. Dkt. 5 at 3. Yet, petitioner has  
6 submitted no evidence to indicate that ICE will not be able to remove petitioner, or that  
7 Russia refuses to accept petitioner. Respondent has submitted evidence that “the  
8 government of Russia has continued to process travel documents for their citizens.”  
9 Dkt.12-1 at 3. Respondent states that the process sometimes requires six months or  
10 more. *Id.* Therefore, because respondent has shown it is likely that petitioner’s removal  
11 will occur in the reasonably foreseeable future, and petitioner has not presented  
12 evidence to the contrary, petitioner is not entitled to habeas relief. *Zadvydas*, 533 U.S.  
13 at 701.

14 I. Bond hearing

15 Although not specifically addressed by respondent, petitioner also requests a  
16 bond hearing. Dkt. 7 at 5. The Ninth Circuit has held that noncitizens subject to  
17 prolonged detention under § 1231(a)(6) are entitled to a bond hearing if removal is not  
18 imminent. *Diouf v. Napolitano*, 634 F.3d 1081, 1082 (9th Cir. 2011) (“*Diouf II*”); see also  
19 *Aleman Gonzalez v. Barr*, 955 F.3d 762, 765–66 (9th Cir. 2020) (reaffirming *Diouf II*’s  
20 holding).

21 In *Diouf II*, the Ninth Circuit held that “an individual facing prolonged immigration  
22 detention under 8 U.S.C. § 1231(a)(6) is entitled to release on bond unless the  
23 government establishes that he is a flight risk or a danger to the community.” 634 F.3d  
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1 at 1082. The court emphasized that the “focus . . . is upon *prolonged* detention,” as the  
2 term is used in *Zadvydas*. *Id.* at 1091 (emphasis in original).

3 Specifically, the court held that the government must provide a bond hearing  
4 “when detention crosses the six-month threshold and release or removal is *not*  
5 *imminent*.” *Id.* at 1091–92 (emphasis added); see also *id.*, at 1092 n.13 (“As a general  
6 matter, detention is prolonged when it has lasted six months and is expected to  
7 continue more than minimally beyond six months.”) Thus, under *Diouf II*, the petitioner  
8 would have a case for a bond hearing only after detention becomes prolonged and  
9 where release is not imminent.

10 Here, as discussed above, Petitioner’s post-removal period detention is not  
11 prolonged; Petitioner’s detention is still within the presumptively reasonable six-month  
12 period. *Zadvydas*, 533 U.S. at 701. Furthermore, there is no evidence that Petitioner’s  
13 removal is not imminent; the respondent is in the process of obtaining a travel  
14 document, and there is no basis to expect that the document will not be issued. Dkt. 12-  
15 1 at 3. The evidence demonstrates that Petitioner’s removal is likely to occur in the  
16 reasonably foreseeable future. Accordingly, the Court recommends that Petitioner’s  
17 request for a bond hearing be denied.

#### 18 CONCLUSION

19 The Court recommends that the Government’s motion to dismiss (Dkt. 7) be  
20 GRANTED, petitioner’s habeas petition (Dkt. 5) be DENIED, and this action be  
21 DISMISSED without prejudice.

22 The parties have **fourteen (14) days** from service of this Report and  
23 Recommendation to file written objections thereto. 28 U.S.C. § 636(b)(1); Fed. R. Civ.  
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1 P. 72(b); *see also* Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of  
2 those objections for purposes of *de novo* review by the district judge, *see* 28 U.S.C. §  
3 636(b)(1)(C), and can result in a waiver of those objections for purposes of appeal. *See*  
4 *Thomas v. Arn*, 474 U.S. 140, 142 (1985); *Miranda v. Anchondo*, 684 F.3d 844, 848 (9th  
5 Cir. 2012) (citations omitted). Accommodating the above time limit, the Clerk shall set  
6 this matter for consideration on September 20, 2024, as noted in the caption.

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8 Dated this 5th day of September, 2024.

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12 Theresa L. Fricke  
13 United States Magistrate Judge  
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